

87-2076

No. 87-2706

(2)

Supreme Court, U.S.

FILED

JUL 18 1988

JOSEPH F. SPANIOLO, JR.
CLERK

In The
Supreme Court of the United States

October Term, 1988

J & C, INC. and T-K CO., A Joint Venture,

Petitioner,

vs.

COMBINED COMMUNICATIONS CORPORATION OF
KENTUCKY, INC., and MARK KOEBRICH,

Respondents.

On Writ of Certiorari to the
Supreme Court of Kentucky

**BRIEF FOR RESPONDENTS COMBINED COMMUNICATIONS
CORPORATION OF KENTUCKY, INC. AND
MARK KOEBRICH IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI**

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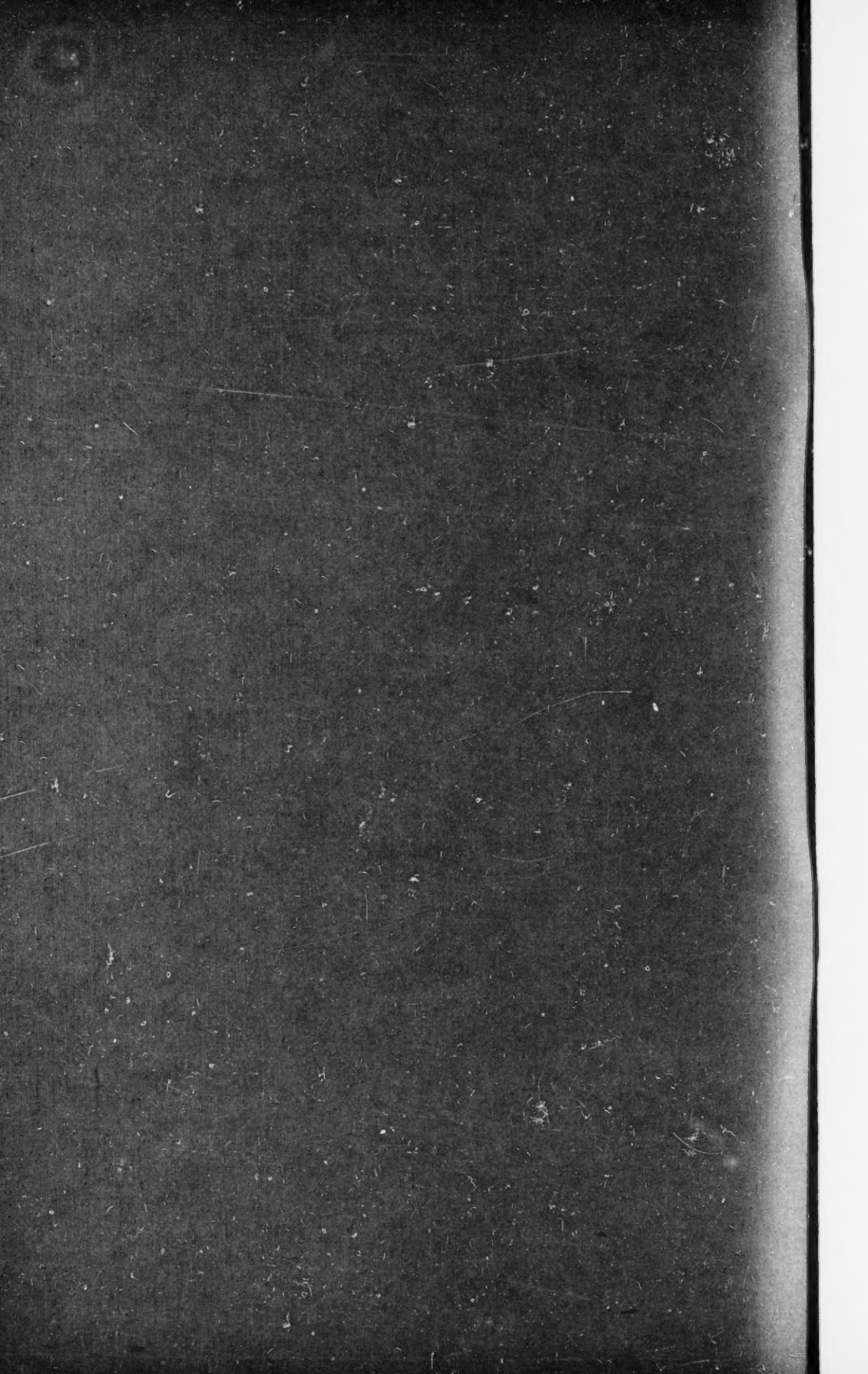


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RULE 28.1 LIST

Pursuant to Rule 28.1 of the Rules of the Supreme Court, Respondent Combined Communications Corporation of Kentucky, Inc. herein discloses the following: Combined Communications Corporation of Kentucky, Inc. was liquidated on February 16, 1984. At that time it was a wholly-owned subsidiary

of Combined Communications Corporation, which is, in turn, a wholly-owned subsidiary of Gannett Co., Inc.

OPINIONS BELOW

The opinions of the Kentucky Court of Appeals and the Circuit Court are found in Petitioner's Appendix ("PA") at 14a and 7a, respectively, and the Court of Appeals opinion is reported unofficially in 14 Media Law Reporter 2162. The order of the Supreme Court of Kentucky denying motions for discretionary review is found at PA 26a-27a.¹

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATEMENT OF THE CASE

Respondents are a television station and one of its news reporters. This is a libel and invasion of privacy-false light case brought by the Petitioner who is one of three original plaintiffs. Petitioner — the so-called Joint Venture — is a business entity whose damage claim for false light and libel was set aside by the trial court for failure to prove damages at trial with reasonable certainty. (PA 7a-11a). Thereafter, the Kentucky Court of Appeals dismissed the libel claim for failure to prove "actual malice" and dismissed the invasion of privacy-false light claim because the state law of Kentucky does not permit a business entity to recover for such a tort. (PA 14a-25a).

¹ Where, as here, the Kentucky Supreme Court refused to review the decision of the Court of Appeals, petitioner's writ of certiorari should be addressed to the intermediate appellate court, not the highest court. L. Stern, *Supreme Court Practice*, (6th ed. 1986), p.142.

At trial, the evidence showed that the Metropolitan Sewer District in Louisville, Kentucky, operated a sewage treatment plant processing raw sewage. The end product of the treatment process was a substance called "dry cake" or "sludge". For several years the plant's daily output of sludge had been accumulating without disposal. In 1979, the Joint Venture entered into a contract with the Sewer District for the removal of the sludge. The Joint Venture hoped that the sludge that was to be removed could be mixed with other ingredients and that this "blend" could be used to reclaim and revegetate strip mined land in Kentucky.

The Joint Venture planned to transport the sludge to a storage site in Nelson County, Kentucky, for blending. However, local protests extensively reported by Kentucky newspapers and television forced the Joint Venture to look elsewhere for a storage site. The Joint Venture, through its principals, tried to convince the public generally, as well as local zoning and health officials, that the sludge was not a threat to the community. As might be expected, public controversy arose wherever and whenever the Joint Venture sought to obtain governmental approval to locate its sludge storage operations.

In late 1980, the Joint Venture arranged with a private landowner, Elmer Combs, to deposit the accumulated 20,000 tons of sludge on his land in Charlestown, Clark County, Indiana. On December 18, 1980, respondents' news program reported that civil and criminal actions for violation of Charlestown zoning regulations had been filed because of the open storage of the sludge on private property². Apparently, the public and the Clark County authorities were anxious to rid Clark County of the sludge deposit on open land.

² There were actually two broadcasts on December 18, 1980, but since they are virtually identical, they will be referenced as a single broadcast. A transcript of the December 18, 1980 broadcasts was a trial exhibit and is found in the Respondents' Appendix ("RA") at RA 7-8.

The Joint Venture's libel claim was limited to this December 18, 1980 broadcast¹ and was submitted to the jury on the Joint Venture's claim that the following italicized language was defamatory:

Angry Indiana officials ordered the firm to stop hauling and clear both sites, a directive they've ignored. So now, the Clark County Prosecutor's office is getting tough. *Civil and criminal actions have been filed* citing violations of zoning regulations *at the Charlestown site*, the land clearly designated for agricultural use only, not industrial or commercial use.

In a single award, the jury awarded petitioner damages for false light and libel for \$2,689,000. On motion for judgment notwithstanding the verdict, the trial court set aside the Joint Venture's award upon the ground that it was speculative and unsupported by trial evidence. (PA 7a-11a).

All parties appealed to the Court of Appeals of Kentucky, which on August 14, 1987 dismissed the Joint Venture's false light claim. Petitioner does not seek review of the dismissal of that purely state law claim. In a modified opinion of December 11, 1987, the Court of Appeals further dismissed the Joint Venture's libel claim upon the ground that the implicated broadcast of December 18, 1980 was true and that petitioner, which was found to be a limited purpose public figure, had failed to prove "actual malice". (PA 21a, 23a).

¹ The limited scope of the Joint Venture's libel claim is conceded. (Petition, p. 5; see PA 1a-2a).

REASONS FOR NOT GRANTING THE PETITION

A. This Case Does Not Raise Important Questions Of Federal Law.

Petitioner spends little time discussing the “special and important” reasons why this Court should grant a writ of certiorari. (Rule 17.1, Rules of the Supreme Court of the United States). In fact, petitioner merely cites 28 U.S.C. § 1257(3), quotes the First Amendment to the Constitution, and ultimately concludes that “the Kentucky Court of Appeals, ‘has decided an important question of federal law which has not been, but should be, settled by this Court’ . . .” (Petition, pp. 12-13).

Petitioner states the following to be that “important question” presented for review:

Does the fact that a public figure defamation plaintiff is not named in a broadcast in and of itself negate any possibility that the broadcast was made with constitutional “actual malice?” Or may a plaintiff in such a situation resort to common-law rules of colloquium in order to prevail, so long as he otherwise proves the requisite “actual malice?”

(Petition, p. i.)

As is apparent from the Court of Appeals opinion, the fact that the Joint Venture was not named in the broadcast had absolutely no effect upon the Court’s decision to dismiss the libel claim. Contrary to what is suggested by petitioner’s “questions”, the Kentucky Court of Appeals assumed that the Joint Venture was named in the broadcast and then dismissed the libel claim for failure of proof of actual malice. As a result, even if the proposed question was an important one under federal law, which it is not, the question that petitioner posits for review does not arise from this record and was not addressed by the Kentucky courts.

B. *The Courts Below Correctly Applied the Governing Law.*

Petitioner claims that the December 18, 1980 broadcast was libelous. The essence of that broadcast was that:

Civil and criminal actions have been filed citing violations of zoning regulations at the Charlestown site, the land clearly designated for agricultural use only, not industrial or commercial use.

(RA 7).

In fact, civil and criminal actions *had been filed*, as reported. Elmer Combs, the landowner who was storing the sludge for the Joint Venture, had been charged with civil and criminal violations in connection with the storage of the Joint Venture's sewer sludge. (Copies of the criminal and civil charges are found at RA 1-2 and RA 3-5, respectively.) The fact that charges had been filed, the sting of the December 18 broadcast, is not controverted. The petitioner admitted in the Kentucky Court of Appeals that: "Civil and criminal actions were filed citing zoning violations at the Charlestown site where the Joint Venture stored . . . [sludge]." (Reply to Petition for Rehearing [in the Kentucky Court of Appeals], p.2). Before this Court, petitioner concedes that ". . . civil and criminal charges had indeed been filed against the landowner of the site in Charlestown, Indiana, used by the Joint Venture." (Petition, p. 8).

The allegedly libelous statement was "of and concerning" either landowner Combs (as argued by the respondents) or the Joint Venture (as argued by the petitioner). The Court of Appeals considered *both* possibilities and correctly held that, in either case, petitioner's libel action failed. (PA 23a).

If the reference in the December 18, 1980 broadcast was to Elmer Combs, then the Court of Appeals was correct in dismiss-

ing the Joint Venture's libel claim because the libel was not "of and concerning" the Joint Venture, and it was true as to Combs.

If the reference in the December 18, 1980 broadcast was to the Joint Venture, then the Court of Appeals was correct in dismissing the Joint Venture's libel claim because the Court of Appeals did precisely what this Court instructed it to do in *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984). It reviewed the evidence and concluded that: "[a]s to the December 18, 1980, broadcast, we agree that the evidence cannot meet the required standard of review," *i.e.*, actual malice. (PA 23a).

It is well-settled that under the First Amendment a plaintiff who is a public figure can recover for libel only if he demonstrates by clear and convincing evidence that the defendant knew that his statement was false or that he subjectively entertained serious doubts as to the truth of the statement. *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 335 n.6 (1974); *Time Inc. v. Hill*, 385 U.S. 374 (1967); *Sparks v. Boone*, 560 S.W.2d 236 (Ky. 1977).

It is also well-established that, under the First Amendment, an appellate court must make an independent review of the evidence submitted at trial to determine whether plaintiff has met this conceded heavy burden. *New York Times v. Sullivan*, *supra*, 376 U.S. at 284-286; *Bose Corp. v. Consumers Union*, *supra*, 466 U.S. at 514 (1984).

The Kentucky Court of Appeals, in making the *Bose* review, concluded that, if the December 18, 1980 broadcast was interpreted as "of and concerning" the Joint Venture, then "the evidence fails to show actual malice with convincing clarity and the libel claim of the Joint Venture should be dismissed." (PA 23a).

That "failure of proof" ruling ended Petitioner's lawsuit. Therefore, in reality the question for which review is sought is:

Whether the Kentucky Court of Appeals should have reviewed the evidence supporting the libel verdict to determine whether the Joint Venture proved actual malice with convincing clarity?

However, that question, the one which petitioner actually seeks review of, is explicitly foreclosed by prior decisions of the Court, such as *Bose Corp., supra*, so as to leave no room for controversy. Therefore, the petition for a writ of certiorari should be denied. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311 (1902); *Zucht v. King*, 260 U.S. 174 (1922); *Palmer Oil Corp v. Amerada Corp.*, 343 U.S. 390 (1952).

C. The Petition Is Based Upon A False Premise.

Neither at trial, nor in the Kentucky Court of Appeals, nor in its petition to this Court did the petitioner point to a single piece of evidence to support its heavy burden that the respondents believed the December 18, 1980 broadcast to be false or that respondents entertained serious doubts as to its truth. Yet, it was petitioner's burden to prove this "actual malice" by clear and convincing evidence as well as to prove that the statement was, in fact, false. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986).

The petition is built on the following false premise found at pages 7-8 of the petition:

The Plaintiffs [petitioners here] proved at the trial of this case that Defendant Koebrich knew at the time of *these broadcasts* [*i.e.*, the two broadcasts of December 18, 1980] that no civil or criminal charges had ever been filed by any agency or authority against any of the Plaintiffs . . . (emphasis added).

Petitioner then discusses evidence concerning certain knowledge

the reporter had at the time of the broadcast from speaking with the county prosecutor and the attorney from the County Planning Commission (*i.e.*, that the actual filing of charges depended upon the outcome of tests to be performed on the sludge). (Petition, pp. 7-8).

Petitioner erroneously represents to this Court that this evidence relates to the December 18, 1980 broadcast. This is absolutely untrue. The evidence which petitioner relies on as proof of actual malice concerns a broadcast made three weeks later on January 8, 1981.

The distinction between these two broadcasts is clearly made in the special interrogatories submitted to the jury. The Joint Venture's libel claim was submitted to the jury based solely and specifically on the language in the December 18, 1980 broadcast that "civil and criminal actions have been filed." (PA 2a-3a). In contrast, the January 8, 1981 broadcast (RA 9-12) is about Thompson (who was one of the other plaintiffs). Thompson's libel claim was submitted to the jury solely and specifically on the language in the January 8, 1981 broadcast that Thompson was "facing civil and criminal counts." (PA 1a-2a). Thompson's libel claim is not at issue herein.

Although petitioner would like to blur the distinction between these two broadcasts, the record is too clear to allow such a deception. As noted by the Court of Appeals:

Regarding the broadcast of January 18, 1981 [sic January 8, 1981], Mr. Koebrich, the reporter, testified that this statement was based on information from the county prosecutor, and from the county planning commission attorney that they were investigating the possibility of filing charges. Koebrich testified that he believed "facing" meant something less than that charges were actually being filed.

(PA 23a [emphasis added]).

The Court of Appeals' conclusion that the evidence on which petitioner now relies related to the January 8, 1981 broadcast is supported by the trial record:

Q. Mr. Koebrich, you recall, do you not, a story wherein you stated that the Plaintiffs were facing civil and criminal counts?

A. Yes, I do.

Q. Do you recall that story?

A. Yes, I do.

Q. Who told you that they were facing civil and criminal counts, sir?

A. Clark County Prosecutor Dan Donahue and Clark County Planning Commission Attorney David Nahan.

Q. Mr. Koebrich, have you seen any documents wherein Mr. Thompson and Mr. Crum or the Joint Venture were charged with civil or criminal counts?

A. No, sir, the charges were never filed.

Q. Mr. Koebrich, what was the date that you ran that broadcast?

A. I think it was 1-8-81.

MS. WESTERFIELD: Please?

A. I think it was 1-8-81, 5:30 and 11. Yes, it was 1-8-81.

(RA 6; Trial Transcript, October 25, 1985, Vol. II, pp. 84-85).

The January 8, 1981 broadcast (RA 9-12) to which this testimony refers included the following statement by the reporter:

And Thompson is stockpiling more of the stuff just outside of Charlestown, an enterprise for which he is facing criminal and civil counts. The proposal he submitted today seeks

property on which to put even more sludge; property inside the Charlestown ammo plant, open fields the government leases to area farmers.

(RA 11 [emphasis added]).

Thompson is not petitioning this Court. His case has been remanded for retrial. The testimony on which petitioner relies in support of its allegation of actual malice relates to the January 8, 1981 broadcast. That testimony did not deal with the December 18, 1980 broadcast, which is the *only* broadcast the jury considered on the Petitioner's libel count. (PA 2a-3a).

At trial petitioner failed to introduce any evidence at all of actual malice concerning this December 18, 1980 broadcast. Therefore the Kentucky Court of Appeals properly dismissed the libel count for failure of proof of actual malice.

This fact-bound determination of the Kentucky Court of Appeals is not worthy of review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: July 15, 1988

Respectfully submitted,

NIXON, HARGRAVE, DEVANS & DOYLE

John B. McCrory

(Counsel of Record for Respondents)

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Attorneys for Respondents Combined

Communications Corporation of

Kentucky, Inc., and Mark Koebrich

RESPONDENTS' APPENDIX



RA-1

STATE OF INDIANA)	IN THE CLARK COUNTY COURT
) SS:	
COUNTY OF CLARK)	CAUSE NO. 80-M-1414
	OFFENSE: VIOLATION OF ZONING REGULATIONS
STATE OF INDIANA	STATUTE: TITLE IV, SEC. 4.01, ORDINANCE NO. 10, 1954, CLARK COUNTY (PENALTY: TITLE V, SEC. 5.04)
VS.	
ELMER COMBS	

DAVID NACHAND being duly sworn upon oath, says that at the County of Clark, in the State of Indiana, on or about the 14th day of November, 1980, that:

ELMER COMBS did then and there violate *TITLE IV-Zone Regulations, Section 4.01 — Use Requirements, Ordinance No. 10, 1954*, as adopted by the Board of County Commissioners, Clark County, Indiana, in that the said ELMER COMBS did use certain land owned by him, to-wit:

Part of Survey No. One Hundred (100) of the Illinois Grant described thus: Beginning at the most easterly corner of said Survey No. 100, said corner being common to Surveys Nos. 101, 79, and 78 of said Illinois Grant; thence along the southeast side of said Survey No. 100, South 49 deg. 56 min. West, 1117.8 feet, thence North 40 deg. 41 min. West 101.1 feet; thence S. 49 deg. 30 min. West, 157.7 feet; thence North 40 deg. 22 min. West 2678.9 feet; thence North 49 deg. 29 min. East, 1273.4 feet to the line common to Surveys Nos. 100 and 101; thence south 40 deg. 29 min. East, 2789.6 feet, along the northeast side of Survey No. 100, to the place of beginning, containing 81.12 acres, more or less.

for a purpose not in conformity with the uses permitted in the zone wherein said land is located, in that said land owned by ELMER COMBS zoned "A1" *Agricultural* was used for the accumulation of sludge for commercial purpose which use of said land by ELMER COMBS was not authorized as a permitted use under Section 4.04 of said Ordinance, then and there being contrary to the form of Statutes in such cases made and provided and against the peace and dignity of the State of Indiana.

RA-2

/s/ David Nachand
DAVID NACHAND, Affiant

Subscribed and sworn to before me on this 8th day of December, 1980.

/s/ Daniel F. Donahue
DANIEL F. DONAHUE
Prosecuting Attorney
4th Judicial Circuit
State of Indiana

Approved by me this 8th day of December, 1980.

/s/ Daniel F. Donahue
DANIEL F. DONAHUE
Prosecuting Attorney
4th Judicial Circuit
State of Indiana

DEPOSITION
EXHIBIT
Nachand #4

RA-3

FILED
DEC 8 1980
/s/ Jo Thomas McCartey
Clerk Clark Superior Court

SUPERIOR COURT FOR THE COUNTY OF CLARK
STATE OF INDIANA

Clark County Plan Commission,
Plaintiff

vs.

Cause No. 80-S-158

Elmer Combs,
Defendant

COMPLAINT

Plaintiff by and through its attorney, affirms:

1. That Plaintiff is an agency of Clark County, Indiana, authorized pursuant to the zoning ordinance of Clark County, and Indiana Code 18-7-4-1015, to institute actions such as this for enforcement of the terms of the zoning ordinance of Clark County, Indiana.

2. That the Defendant, at all material times, was and is the owner of and/or has a possessory interest in the following described real estate located in Clark County, State of Indiana:

Part of Survey No. One Hundred (100) of the Illinois Grant described thus: Beginning at the most easterly corner of said Survey No. 100, said corner being common to Surveys Nos. 101, 79, and 78 of said Illinois Grant; thence along the southeast side of said Survey No. 100, South 49 deg. 56 min. West, 1117.8 feet; thence North 40 deg. 41 min. West 101.1 feet; thence S. 49 deg. 30 min. West, 157.7 feet; thence North 40 deg. 22 min. West 2678.9 feet; thence North 49 deg. 29 min. East, 1273.4 feet to the line common to Surveys Nos. 100 and 101; thence south 40 deg. 29 min. East, 2789.6 feet, along the northeast side of Survey No. 100, to the place of beginning, containing 81.12 acres, more or less.

3. That the Defendant's property is zoned A-1 and that the ordinance of Clark County, Indiana, states the following permitted

uses under said zoning classification:

1. All uses permitted in C1 Zone, plus:
2. One and Two-Family Dwellings.
3. Greenhouses and Nurseries.
4. Churches, Public and Parochial Schools.
5. The Following Uses, if their location is first approved by the Board following a public hearing:
 - a. Lodging, Tourist, Nursing or Rest Home.
 - b. Processing and Storage of Agricultural Products.
 - c. Roadside Stands.
 - d. Work Shop or Repair Shop for custom work when located on the same lot with the owner and operator employing not more than two assistants.

4. That the Defendant is currently using said real estate in violation of said ordinance in that said Defendant is storing and/or has dumped approximately 13,000 tons of "sludge" and/or human waste material on the subject real estate for and in anticipation of commercial purposes.

5. That on or about November 14, 1980, the Defendant was notified of said violations which notice Defendant has ignored and violated.

6. That the Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands:

1. An order of this Court against the Defendant, his agents and employees, permanently enjoining said persons from violating the provisions of the Clark County Zoning Ordinance and to enter an order requiring Defendant to remove all "sludge" and/or human waste material stored or hauled to Defendant's real estate in anticipation of a commercial venture.

2. Court costs expended herein, including a reasonable attorney fee.

3. Any and all other legal and proper equitable relief to which Plaintiff may be entitled.

I affirm, under the penalties for perjury, that to the best of my knowledge and belief, the foregoing representations are true.

RA-5

/s/ David Nachand

DAVID NACHAND,
Attorney for Plaintiff,
416 East Court Avenue,
Jeffersonville, IN 47130
Telephone: (812) 282-1361.

DEPOSITION
EXHIBIT
Nachand #3

-84-

Q. Mr. Koebrich, you recall, do you not, a story wherein you stated that the Plaintiffs were facing civil and criminal counts?

A. Yes, I do.

Q. Do you recall that story?

A. Yes, I do.

Q. Who told you that they were facing civil and criminal counts, sir?

A. Clark County Prosecutor Dan Donahue and Clark County Planning Commission Attorney David Nahan.

Q. Mr. Koebrich, have you seen any documents wherein Mr. Thompson and Mr. Crum or the joint venture were charged with civil or criminal counts?

A. No, sir, the charges were never filed.

Q. Mr. Koebrich, what was the date that

-85-

you ran that broadcast?

A. I think it was 1-8-81.

MS. WESTERFIELD: Please?

A. I think it was 1-8-81, 5:30 and 11. Yes, it was 1-8-81.

(12-18-80 at 5:30 P.M. — Stipulated date)

TELEPROMPTER: More than 20,000 tons of sewage sludge from Louisville, illegally stored on property in Clark County, may soon be the target of more court action.

Our Indiana Bureau Chief, Mark Koebrich, reports that if efforts to remove the sludge aren't under way soon, the Clark County Prosecutor's office will initiate a series of \$300-a-day fines.

MR. KOEBRICH (Video): The first truckloads of sludge arrived in Clarksville in mid-August unannounced and unwanted.

FEMALE INTERVIEWEE: I'm against it, and it appears that everyone else down here that has property is completely against both the dumping, the odor, the possible contamination to our well water, because we do not have city water.

MR. KOEBRICH (Video): In a similar move not more than a month later, the firm started trucking the stuff to a site east of Charlestown with the same results.

MALE INTERVIEWEE: I don't like to see my community made a place to pile crap.

MR. KOEBRICH (Video): Angry Indiana officials ordered the firm to stop hauling and clear both sites, a directive they've ignored. So now, the Clark County

Pltf. Exh. APPENDIX p. 162

(12-18-80 at 5:30 P.M. — Stipulated date)

Prosecutor's office is getting tough. Civil and criminal actions have been filed citing violations of zoning regulations at the Charlestown site, the land clearly designated for agricultural use only, not industrial or commercial use.

Clark County Prosecutor, Dan Donahue, says he'll press harder, if necessary.

MR. DONAHUE: If immediate action isn't undertaken by the first of the year, then we will begin to take immediate action on a daily basis.

MR. KOEBRICH (Video): A daily basis means a \$300-a-day fine for every day the sludge remains where it is. Attempts today to reach the Louisville firms involved in the sludge operation were unsuccessful.

Mark Koebrich, 32 Alive News, Indiana.

* * *

pltf. Exh. APPENDIX p. 163

(12-18-80 at 11:00 P.M.)

TELEPROMPTER: More than 20,000 tons of sewage sludge from Louisville, illegally stored on property in Clark County, may soon be the target of more court action. The Louisville firm that trucked the material to sites in Clarkesville and Charlestown late last summer, has so far ignored directives to remove it.

Some civil and criminal action has already been taken, but Clark County Prosecutor, Dan Donahue says he'll press harder, if necessary.

MR. DONAHUE: If immediate action isn't undertaken by the first of the year, then we will begin to take immediate action on a daily basis.

MR. KOEBRICH (Video): Okay. So that we're talking about a fine —

MR. DONAHUE: (Interrupting) We're talking about a maximum \$300 fine under the ordinance.

TELEPROMPTER: That's \$300 a day in penalties. No comment today from the sludge firms in Louisville involved in the operation.

* * *

Pltf. Exh. APPENDIX p. 164

(1-8-81 at 5:30 P.M.)

TELEPROMPTER: Bids were opened today on some 700 acres of farmland at the Charlestown Army Ammunition Plant. The army is leasing the acreage for crops. But one of those bidding today was a Louisville businessman not exactly known for his endeavors in agriculture.

Our Indiana Bureau Cheif, Mark Koebrich, has the story.

MALE ON-CAMERA VOICE: High bid is \$400 by Gale Combs.

MR. KOEBRICH (Video): Most of the group present for today's bid opening were farmers, but this man isn't. He's Louisville businessman, Tommy Thompson; better known in southern Indiana as the sludge salesman. It's also known he doesn't like interviews.

(To Mr. Thompson) We're surprised to see you here, because you're really not known for your farming exploits; you're — you're better known for your exploits in sludge. And I'm just curious to know if maybe this has anything to —

Mr. Thompson: (interrupting) Fertilizer.

MR. KOEBRICH (Video): Excuse me. Fertilizer. (Continuing) — if this has something to do with your sludge oper — excuse me — fertilizer operation. Can

Pltf. Exh. APPENDIX p. 165^A

(1-8-81 at 5:30 P.M.)

you enlighten us a little?

Thompson's sludge-hauling operation in southern Indiana hasn't won him a lot of friends. Officials in Clarksville have given him until the last of March to clear out of this site. It's estimated there's 4,000 tons of sludge here, a by-product of Louisville's sewage treatment process. And Thompson is stockpiling more of the stuff just outside of Charlestown, an enterprise for which he is facing civil and criminal counts.

Today, he submitted a proposal seeking to move even more sludge into Indiana; this time to the Charlestown Army Ammu-

nition Plant, the fields on the plant's grounds that are leased to area farmers. Thompson's bidding for a lease, even though the government states very clearly land can be used for crops only. And there are other problems.

MR. McCLELAN: Well, the government says that they can't accept outside waste. And we here at the plant can't make a decision.

LT. COL. ORTON: The department of defense has a policy that its installations will not accept any waste products generated off the installation.

MR. KOEBRICH (Video): Thompson's motivations in wanting to locate here are understandable. A 10,000-acre federal reservation is the ideal place for his

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(1-8-81 at 5:30 P.M.)

much maligned sludge project. After all, on a property of this size, he doesn't have to contend with angry neighbors or local units of government. But the chances of his actually ending up here appear to be slim.

Mark Koebrich, 32 Alive News, Indiana.

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(1-8-81 at 11:00 P.M.)

TELEPROMPTER: Officials at the Charlestown Army Ammunition Plant today opened bids on some 700 acres of farmland. The acreage is being leased to area farmers for crops. But one of the bidders was not a farmer; he's a Louisville business man with a reputation in an area other than agriculture.

Our Indiana Bureau Chief, Mark Koebrich, has the story.

MR. KOEBRICH (Video): His name is Tommy Thompson. In southern Indiana, he's better known as the sludge salesman, a tittle and a business that haven't won him a lot of friends. He doesn't like to talk about it.

(To Mr. Thompson) The fact that you're here leads to speculation that maybe you're considering leasing land for another mixing site. Is that a possibility. You're really not known in the valley as a farmer, sir, more as a businessman. Can you — could you comment? Would you prefer not to comment?

Thompson's sludge-hauling operation has two southern Indiana communities in an uproar. Officials in Clarksville have given until the last of March to clear out of this site. It's estimated there's 4,000 tons of sludge here, a by-product of Louisville's sewage treatment process.

And Thompson is stockpiling more of the stuff

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(1-8-81) at 11:00 P.M.)

just outside of Charlestown, an enterprise for which he is facing criminal and civil counts. The proposal he submitted today seeks property on which to put even more sludge; property inside the Charlestown ammo plant, open fields the government leases to area farmers.

Thompson's motivations in wanting to locate here are understandable. A 10,000-acre federal reservation is the ideal place for his much maligned sludge project. After all, on a property of this size, he doesn't have to contend with angry neighbors or local units of government. But the chances of his actually ending up here appear to be slim.

That's because government regulations state clearly the land can be used for crops only.

LT. COL. ORTON: The department of defense has a policy that its installations will not accept any waste products generated off the installation.

MR. KOEBRICH (Video): Officials here are doubtful Thompson's request will be approved.

Mark Koebrich, 32 Alive News, Indiana.

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